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ABSTRACT

Administrators need to know what control they have over student-produced publications. The first step administrators should take is to be well versed in the First Amendment and in court rulings involving the scope of student rights and school authority in regard to the student press. Step two is to make rules within the law. In general, school regulations regarding the student press are constitutionally permissible only when they: (1) spell out precisely what is forbidden; (2) state plainly the means by which students are to submit the materials for review; (3) provide for prompt approval or disapproval of material students submit for review; and (4) provide procedures for student appeal. Emphasis needs to be placed on discipline for violation of enforcible publication rules, not on efforts to prevent publication. (MLF)

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Tips for Principals from NASSP March 1985

How To Sleep Better at Press Time

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Tips for Principals from NASSP March 1985

How To Sleep Better at Press Time

It's press time for the school newspaper. And if you're like some school principals, you're likely to lose some sleep knowing your students are putting their paper "to bed."

Principals have been tossing and turning at press time since 1969, when the federal judges ruled in *Tinker v. Des Moines Independent Community School District* that students do not "shed their constitutional rights to freedom of speech or expression at the school-house gate."

Following *Tinker*, a number of federal courts have handed down decisions indicating that the rights of public school journalists will be protected even though the publication in which their work appears are owned and operated by the school itself.

How do you know what control you *do* have over student-produced publications? And what should you do to make sure your actions do not violate the First Amendment?

Try these two steps:

Step One: Be Familiar with the Law

Pay close attention to the First Amendment of the U.S. Constitution and to court rulings involving the scope of student rights and school authority in regard to the student press. Make sure your student advisers and students are also well-versed in them. The most readily available authority is NASSP's *Legal Memorandum*, April 1984.

Tinker specifically ruled that when school officials take away a student's constitutional rights, they must base their actions on "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." A principal cannot censor any publication or article merely because it is controversial or because it criticizes the school, a school procedure, or the school system.

On the other hand, your students should understand the courts have held consistently that the First Amendment's sweeping command against suppression of speech and press does not promise absolute freedom of expression — that with their right to publish facts and opinions comes certain responsibilities. Foremost, they may not violate others' rights in the exercise of their own.

And, as the court stated in *Quarterman v. Byrd* in 1971, "[i]t is generally held that the constitutional right to free speech of public secondary school students may be modified or curtailed by school regulations 'reasonably designed to adjust these rights to the needs of the school environment.' "

Step Two: Make Rules Within the Law

So how do you formulate rules that uphold *all* students' rights *and* protect the school environment?

It's not easy. Even the rulings of different federal court judges don't agree on whether schools can require advance approval of student publications in order to forecast the substantial disruption that would justify suppression.

We do know, as the 4th Circuit Court of Appeals ruled in *Baughman v. Freienmuth*, school rules imposing prior restraint must be drafted more precisely than rules imposing post-publication sanctions.

In general, school regulations that call for prior review and restraint on the distribution of student newspapers and other literature are constitutionally permissible *only* when they:

1. *Spell out precisely what is forbidden so that a reasonably intelligent student will know what he may and may not write.*

Most schools feel that they are on comfortable legal ground in prohibiting students from publishing and distributing material that:

- Is obscene, according to current community standards.
- Contains profanity — as defined by the community's major newspaper.
- Is libelous or slanderous, or that violates the rights of privacy.
- Advocates breaking any law or violating lawful school regulations.
- Would cause substantial disruption of the orderly operation of the school.
- Criticizes or demeans any individual or group because of race, color, creed, sex, national origin, age, ancestry, or marital status.
- Encourages action that endangers the health and safety of students.

Some school policies specifically prohibit ads for cigarettes, liquor, or any other product not permitted to be sold to teenagers. Others prohibit material that solicits funds from students.

Rule makers may run afoul of the First Amendment when they attempt to restrict endorsements of political candidates or ballot measures, whether these endorsements are made via editorial, article, letter, photograph, or cartoon.

Several of the items on the list, including obscenity and profanity, are large gray areas when it comes to legal suppression. Because the law on student press is still in flux, any rules you develop should be reviewed by your school attorney.

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2. *State plainly the means by which students are to submit the materials for review.*

For the most part, newspaper advisers carry the responsibility for reviewing each article prior to its publication to determine if it satisfies the conditions specified in policy. The principal may also review copy prior to publication, but usually is committed to do so within 24 hours after it is submitted for review.

3. *Provide for prompt approval or disapproval of material students submit for review.*

Most acceptable school policies state that any decision to limit or approve the publication and distribution of student materials must be made within one to two school days after receiving the materials for review. When an appeal is brought before the board of education, the board must make a decision at its next scheduled meeting.

At each stage of review, student editors and staff members should be given the opportunity to respond to the reasons stated for suppression.

4. *Provide procedures for adequate and prompt student appeal of a decision to suppress publication, and a description of how it works.*

If there is disagreement regarding publication, most principals set up an editorial board to render an opinion. Typical composition of this board might include two high school administrators; three teachers, including the newspaper adviser; two newspaper staff members; and a student council member who is not on the newspaper staff. It might also include members of the school community.

Most school policies specify that, if the editorial board cannot solve the dispute, students may appeal to the superintendent of schools. Some schools take the student appeals process one more step, to the board of education, which renders a final determination.

When no appeals board is established, student appeals may go directly to the school superintendent or to his administrative panel. All appeals and decisions should be in writing.

Publication rules that don't attempt to exercise prior restraint of content are easier to defend, for example:

1. *Give a definition of "distribution" and its application to different kinds of material.*

This part of your policy would limit the time, place, and manner of student publication distribution.

- *Time.* The policy goal here is to encourage distribution when it will not disrupt classroom or cocurricular activities. On-campus distribution, then, might be limited to one hour before and one hour after the school day, between class periods, and during lunch periods. Distribution would be prohibited during assemblies and fire drills.
- *Place.* Your policy should encourage distribution that doesn't disrupt or restrict the normal flow of traffic of entranceways, within buildings, or outside corridors. It should prohibit distribution in classrooms, libraries, faculty and administrative offices, corridors adjoining those facilities, or in school facilities where the resulting noise would disrupt the orderly operation of the school.
- *Manner.* Your policy would prohibit students from confronting, coercing, or intimidating other students to accept the printed material. It should limit the distribution to a number that will not be disruptive to classes or other school activities. Also, to avoid littering, it might prohibit the materials from being left unattended at any place in the school or on school grounds.

2. *Specify what action will be taken if students don't comply with the rules.*

Usual policy language goes something like this: "Any student who willfully and knowingly violates any portion of these rules will be subject to suspension, expulsion, or other penalty in accordance with established disciplinary procedures."

Even if you stay fine-tuned to the law and make *and communicate* rules within the law, there's no guarantee that you still won't have a few fitful nights before and after your students make use of the free press. It's likely, though, that you will nod off sooner than before you took these steps to protect all students' rights — including the right to a safe and orderly learning environment.

Written by Lu (Van Loozen) Fulbright

Place Emphasis on Discipline for Violation of Enforcible Publication Rules, Not on Efforts To Prevent Publication

The courts seem more likely to look favorably on prior review by school authorities when the publication is a newspaper connected with a journalism or English class, especially if the prior review is limited to a check for accuracy, because of the general power of the schools to regulate course content.

But in a legal jurisdiction where there exists strong opposition to any kind of prior restraint, the legal validity of prepublication regulation of even school-sponsored publications will remain uncertain until ruled upon directly by the courts.

If you're in such a jurisdiction, you'll want to shift your policy-drafting emphasis as much as possible from prior-restraint considerations to efforts to hold students accountable for their actions after the fact, rather than for their printed words. More and more, case law indicates that students can be disciplined for actions and conduct associated with publication and distribution of materials.

Tips for Principals is an occasional publication of the National Association of Secondary School Principals, 1904 Association Drive, Reston, Virginia 22091. John E. Boie, President; Scott D. Thomson, Executive Director; Thomas F. Koerner, Editor; Carol Bruce, Associate Editor.

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